

## Buckle Up!

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“Fasten your seatbelts, it’s going to be a bumpy night!”

Those immortal words delivered by Bette Davis in the film *All About Eve* could equally apply to today’s global trade environment. The year 2019 promises to be another “bumpy night” as businesses continue responding to a dynamic trade environment.

Change and risk management are what it is all about in 2019. As trade compliance professionals our responsibility is to identify risks and help prepare our companies to adapt to those risks. What should be part of your 2019 action plan?

### USMCA / NAFTA

At the end of 2018 the U.S., Canada and Mexico agreed to a final draft of the NAFTA replacement known as USMCA. The agreement still requires ratification by each of the three countries prior to implementation. In addition, the U.S. administration has threatened to withdraw from the NAFTA.

### What should you be doing?

1. **Continue with your NAFTA preparation for 2019.** NAFTA remains the law of the land until further notice. Even if USMCA is ratified the intent for implementation is no sooner than 2020. Even if the U.S. withdraws from the NAFTA, the timeline for doing so is lengthy. Continue to take advantage of the duty savings under NAFTA until the last moment.
2. **Learn about USMCA.** Attend a seminar or webinar and learn about the unique aspects of USMCA. Review the [final draft documents at the USTR website](#).
3. **Evaluate the effect of USMCA on your company.** Perform a comparative analysis between USMCA and NAFTA. Some companies and industries will experience dramatic changes while others will see relatively small differences. Engage a consultant to perform the comparative analysis. (I know a guy.)
4. **Develop a USMCA implementation plan.** Depending on the results of the analysis your plans may be as simple as altering the title on the origin certification. Others may need to consider alterations to their sourcing.

### Drawback Rules

CBP finally released the long awaited revised rules regarding duty drawback. Also known as TFTEA drawback, the changes are now expressed in [19 CFR §190](#). The changes took effect December 17, 2018 with publication in the Federal Register on December 18<sup>th</sup>. ([83 FR 65064, Dec. 18, 2018.](#)) The revised rules are much easier to apply. Most notable

is the liberalization of substitution, now defined at an 8-digit HTS subheading level. Also remarkable is the extension of unused drawback to five years from three and the simplification of certain record keeping requirements.

### What should you be doing?

1. **Learn more about TFTEA drawback.** If you are already using drawback you are likely aware of the changes. Nevertheless, there were minor details within [the final regulation](#) that affect your transition from the older drawback laws to the modernized version.
2. **Evaluate drawback opportunities for your company.** You may have considered drawback in the past but found the administrative burden outweighed the duty refund opportunity. Given the liberalized rules, the administrative burden may now be less. Also, in light of burdensome safeguard duties of 10-25% on certain imported goods, you may now find the equation has changed making a drawback program worthwhile.
3. **Implement a drawback program.** If you are exporting goods that you have imported and on which you have paid duty, you should consider a drawback program today, even for smaller refunds. It is possible to implement a program on your own but, as they say, the devil is in the details. I would advise seeking assistance from a drawback professional.

### Export Control Reform

In November [BIS issued an advanced notice of proposed rules making \(ANPRM\)](#) regarding the review of controls for certain emerging technologies. This list of emerging technologies is wide ranging including artificial intelligence, neuro interfaces, 3d printing and logistics planning. BIS extended the comment period to January 10<sup>th</sup>, 2019.

### What should you be doing?

1. **Learn about the proposed controls.** Accessing the above link understand the scope of emerging technologies and BIS' proposed controls.
2. **Evaluate the effect on your company.** Is your company engaged in the export or deemed export of any of these emerging technologies?
3. **Take steps to begin export control compliance.** If your company is engaged in the export of these technologies, develop export control screening protocols.

### Ongoing use of Safeguard Actions

Also known as the "trade war", the U.S. government's use of safeguard provisions continues to create an environment of uncertainty for U.S. companies. Each waive of safeguards is implemented under similar conditions but each has its own specific conditions and deadlines. Keeping track of what is implemented, what is proposed and what is under consideration can be challenging.

### What should you be doing?

1. **Identify the existing and proposed safeguard actions.** One of the better summaries available is [compiled and updated by ST&R Trade Services](#). The list includes U.S. safeguard actions as well as known retaliatory actions taken against U.S. goods exported abroad.
2. **Evaluate the effect on your company.** Are your goods subject to a safeguard duty? Even if you are not importing from a targeted country, does the safeguard cause supply chain risks of diversion or price increases for your company? Exporters should evaluate if a partner country has issued increased duties in retaliation.
3. **Develop and implement strategies for minimizing the effect of safeguard duties.** Options include:
  - a. Counter source the good from a country not subject to the safeguard. Beware of illegal transshipment.
  - b. Review HTS classification to ensure you are not inadvertently paying safeguard duties based on an inaccurate code.
  - c. Tariff engineer your good to change it to a new classification. This may involve changing a material, performing more or less manufacturing.
  - d. Make a safeguard duty exemption request from the federal agency implementing the safeguard.
  - e. Wait it out in hopes that the safeguard action will eventually be rescinded.

### Ongoing use of AD CVD procedures

The U.S. continues to use the antidumping and countervailing duty process to address unfair trading practices. These punitive duties are applied more surgically than the safeguard actions but are substantially higher. An importer that is caught unaware may find it is paying AD/CV duties in excess of the value of the good.

### What should you be doing?

1. **Monitor existing and proposed AD/CVD actions:** There are a number of ways that an importer can track existing AD/CVD orders. The [USITC maintains a database](#), [USITA maintains a reference guide](#) and [CBP also maintains a repository of communication](#) regarding orders. Tracking the progress of pending cases can be more difficult. Again [USITC has a resource for gaining high-level insight into investigations](#). Those interested in monitoring the minutiae of an AD/CV investigation may register for the [U.S. International Trade Administration's ACCESS system](#).
2. **Evaluate the effect on your company.** Are your goods subject to an AD/CVD order? Keep in mind that even if buying goods from a country not subject to the order, your shipments will be subject to additional scrutiny and screened for illegal transshipment. Are your goods subject to an investigation?

3. **Take action.** Typical AD/CVD orders are much higher than safeguard duties and can quickly create a hardship for the importer. AD/CV duties are designed to curtail the importation of the goods. Like safeguard duties your company has options.
  - a. Submit your good for a review to ensure it falls within scope of the AD/CVD order.
  - b. Counter source the good from a country not subject to the AD/CVD order.
  - c. Reengineer your good so that it falls outside of the scope of an order.
  - d. If your good is subject to an investigation, file comments with the authorities and demonstrate why your good should be excluded from any orders.

### **Southern Border Closure?**

More than likely the threat to close the U.S. southern border is just that, a threat used as a negotiation tactic. But wait! Your job is not to analyze the underlying political environment, rather to identify risks to your supply chain. Even though it is unlikely the U.S. government would close the border ask yourself what would happen if the border between the U.S. and Mexico really closed and develop a contingency plan.

### **INCOTERMS® 2020**

Finally a non-regulatory issue! Every ten years the International Chamber of Commerce evaluates its set of INCOTERM® rules. These are the three-letter acronyms used within commercial contracts to indicate the delivery, routing, cost and risk responsibilities within a shipment. Be sure to leave some time in your calendar to evaluate the revised rules when they are issued later this fall.

### **The Basics**

While you are focused on all of the above, be sure to keep an eye on the basics of export and import compliance and controls. The effects of getting the fundamentals of classification, valuation and country or origin wrong can be amplified in a dynamic regulatory environment.